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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1938

No. 12

D. F. STAHMANN, ANNA M. STAHMANN AND JOYCE F. STAHMANN, DOING BUSINESS AS STAHMANN FARMS COMPANY, PETITIONERS,

vs.

S. P. VIDAL, COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF NEW MEXICO

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR CERTIORARI FILED MARCH 16, 1938.

CERTIORARI GRANTED APRIL 25, 1938.

SUPREME COURT OF THE UNITED STATES

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[fol. a] [Captions omitted]

[fol. 1]

IN UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO

Law

2847

STAHMANN FARMS, a Co-partnership Composed of D. F. Stahmann, Anna M. Stahmann and Joyce F. Stahmann, Plaintiffs,

vs.

S. P. VIDAL, Collector of Internal Revenue for New Mexico, Defendant

COMPLAINT—Filed May 5, 1936

Plaintiff states:

1. That during the crop year of 1934-1935 plaintiff was engaged in Dona Ana county, New Mexico, in the growing of cotton, and was and had been for many years prior thereto cultivating in excess of 2,000 acres of land.

2. That during the said crop year plaintiff produced a quantity of cotton in excess of the amount which, under the provisions of the so-called Cotton Control Act, being Public No. 169 of the 73rd Congress, approved April 21, 1934, 48 Stat. At L. 598, Chapter 157, U. S. C. A., Title 7, Secs. 725, et seq., it was entitled to obtain exemption certificates to cover, and in order to sell said cotton or to market the same it was by the said defendant compelled [fol. 2] to obtain so-called bale tags or identifying tags for each bale of cotton in excess of the quantity allotted under the provisions of said Act to it, and to obtain such tags it was compelled to pay and did pay, but under protest, the sum of $13,064.52, which payment was made in four separate installments, the first of which was in the sum of $9,131.44 and was dated November 27, 1934, and represented by its bank check in that amount, payable to the order of said defendant, the second of which was in the sum of $1,550.23 and was dated November 28, 1934, and represented by its bank check in that amount, payable to the order

of said defendant, the third of which was in the sum of $512.32 and was dated December 13, 1934, and represented by its bank check in that amount, payable to the order of said defendant, and the fourth of which was in the sum of $1,870.53 and dated January 19, 1935, and represented by its bank check in that amount, payable to the order of said defendant, and each and all of which said checks were in due course presented to and paid by the said bank upon which they were drawn to the order of said defendant; that the said tax was exacted by the said defendant in pursuance of the provisions of said so-called Cotton Control Act, and the assessment and collection thereof by the said defendant was illegal and wrongful in that the Act under which plaintiff was compelled to pay was a void and unconstitutional act and, as plaintiff is informed and believes, has, since the assessment and collection thereof, been by the Supreme Court of the United States, in effect, determined to be unconstitutional and void, and the same operated to furnish the defendant no authority whatsoever to demand, exact, and receive from the plaintiff the said amount, or any other amount whatsoever; and, even if the said Act had been valid and constitutional, the said tax so exacted was illegal and void for the reason, first, that under the terms of said Act ten million bales of cotton were authorized to be produced in the United States free and clear of the tax imposed by the said Act, and during the said crop year of 1934-1935 there was produced in the United States, as plaintiff is informed and believes, less than ten million bales of cotton; and, second, the amount thereof was arbitrarily fixed and charged at 5.67 cents per pound of lint [fol. 3] cotton produced by the plaintiff in excess of the amount exempt to him under the provisions of said Act, whereas the amount which could under the provisions of said Act have been lawfully assessed was not to exceed fifty per cent of the central market value thereof, which central market value fluctuated from time to time during the season in question, and the rate charged and collected, as aforesaid, was in excess of fifty per cent of the market value received by plaintiff.

3. That thereafter and on March 6, 1935, the plaintiff duly filed with the said defendant collector claim for refund, according to the provisions of law in that regard and the regulations of the Secreary of the Treasury, which

said claim for refund was stated in detail, and the grounds upon which plaintiff claimed the right to such refund were specifically expressed, and the same was sworn to and filed with the said defendant collector, in duplicate, and which said claim was in due course forwarded by the said defendant collector to the Commissioner of Revenue, and was in like due course by the said Commissioner of Revenue denied and rejected, due notice whereof was furnished to this plaintiff.

Wherefore, plaintiff prays judgment for the recovery of and from the said defendant of the sum of $13,064.52, together with lawful interest thereon from the dates of payment thereof, as hereinbefore set out, and for all costs.

W. C. Whatley, Attorney for Plaintiff, Las Cruces, New Mexico.

Duly sworn to by D. F. Stahmann. Jurat omitted in printing.

[fol. 4] IN UNITED STATES DISTRICT COURT

STIPULATION EXTENDING TIME TO ANSWER—Filed June 17 1936

It is hereby Stipulated by the Plaintiff in the above entitled cause with the defendant that the time within which the defendant may have to answer the above complaint, be and it hereby is extended to June 29, 1936.

W. C. Whatley, Attorney for Plaintiff.

Approved this 17th day of June, A. D. 1936.

Colin Neblett, United States District Judge.

IN UNITED STATES DISTRICT COURT

STIPULATION EXTENDING TIME TO ANSWER—Filed July 22, 1936

It Is Hereby Agreed by plaintiff and defendant that defendant may have until August 10, 1936, to answer in the above case.

Dated July 19, 1936.

W. C. Whatley, Attorney for Plaintiff.

This Stipulation is hereby Approved.

Colin Neblett, United States District Judge.

IN UNITED STATES DISTRICT COURT

DEFENDANT'S ANSWER—Filed August 10, 1936

Comes now S. P. Vidal, Collector of Internal Revenue for the District of New Mexico and defendant in the above cause, and for answer to the Complaint says:

I

Defendant denies all those allegations contained in Paragraph One of the Plaintiff's Complaint and demands strict proof thereof.

II

Answering those allegations contained in Paragraph No. 2 of the Plaintiff's Complaint, defendant denies the same.

III

Answering those allegations contained in Paragraph No. 3, thereof, defendant denies the same.

[fol. 5] Wherefore, having fully answered, defendant moves the Court that the Plaintiff's Complaint be dismissed and that he take nothing thereby and that defendant be allowed its costs herein lawfully expended.

Wm. J. Barker, United States Attorney; Gilberto Espinosa, Assistant U. S. Attorney, Attorney for Defendant.

Duly sworn to by S. P. Vidal. Jurat omitted in printing.

IN UNITED STATES DISTRICT COURT

STIPULATION WAIVING JURY TRIAL—Filed October 15, 1936

Comes now the attorneys for the respective parties to the above entitled and numbered cause and stipulate and agree that the said case may be tried to the Court without the intervention of a jury.

Dated this 30th day of September, 1936.

W. C. Whatley, Attorney for Plaintiff; Gilberto Espinosa, Assistant U. S. Attorney, Attorney for Defendant.

IN UNITED STATES DISTRICT COURT

DEFENDANT'S AMENDED ANSWER—Filed October 23, 1936

In answer to the plaintiff's complaint in the above entitled cause the defendant says:

I

The defendant admits the allegations of fact contained Paragraph One of the plaintiff's complaint.

[fol. 6]

II

In answer to the allegations contained in Paragraph Two of the Plaintiff's complaint the defendant admits that during the crop year 1934-1935 the plaintiff produced a quantity of cotton in excess of the amount which, under the provisions of the Act of April 21, 1934, c. 157, 48 Stat. 598, it was entitled to obtain exemption certificates to cover; and the defendant further admits that the sum of $13,064.52 was paid to him as Collector of Internal Revenue on the dates and in the amounts alleged in Paragraph Two of the plaintiff's complaint. The defendant denies that such amounts were paid to him by the plaintiff, under protest or otherwise, and the defendant alleges that if such amounts were paid to him by the plaintiff, they were paid to discharge the liability imposed upon a person or persons other than the plaintiff by the Act of April 21, 1934. Defendant further denies that the plaintiff was compelled to pay such amounts to him, and the defendant denies that he illegally assessed or collected any sum from the plaintiff or from any person or persons whose liability under the Act of April 21, 1934, was discharged by the plaintiff. The defendant further denies each and every other allegation contained in Paragraph Two of the plaintiff's complaint not herein specifically admitted or denied.

III

In answer to the allegations contained in Paragraph Three of the plaintiff's complaint the defendant admits that on March 6, 1935, the plaintiff filed with the defendant a claim, on Form 843 provided by the Treasury Department, for refund of the sum of $13,064.52, which claim was forwarded by the defendant in due course to the Commissioner of Internal Revenue, and was rejected by the Commissioner

of Internal Revenue on August 22, 1935. The defendant denies the remaining allegations contained in Paragraph Three of the plaintiff's complaint.

Wherefore, having fully answered, the defendant moves that the plaintiff's complaint be dismissed and that he take nothing thereby; and that the defendant be allowed his costs herein lawfully expended.

Wm. J. Barker, (E) United States Attorney; Gilberto Espinosa, Assistant U. S. Attorney, Attorneys for the Defendant.

[fol. 7] *Duly sworn to by S. P. Vidal. Jurat omitted in printing.*

IN UNITED STATES DISTRICT COURT

STIPULATION AS TO FACTS, ETC.—Filed November 23, 1936

It is hereby stipulated and agreed by and between the plaintiff in the above entitled cause by its attorney, W. C. Whatley, and the defendant, S. P. Vidal, Collector of Internal Revenue for New Mexico, by Wm. J. Barker, United States Attorney, and Gilberto Espinosa, Assistant United States Attorney for the District of New Mexico, as follows:

It is agreed that the facts upon which the court may pass upon the issues involved in this cause be agreed upon as follows:

All of those allegations of fact made in the plaintiff's complaint and admitted by the defendant's amended answer are herein incorporated by reference as a part of this stipulation.

It is also stipulated and agreed that the following facts pertinent to the issues herein may be taken as true before the court.

I

During the crop year 1934 and 1935 the plaintiff produced a quantity of cotton in excess of its allotted amount under the Cotton Control Act, as set forth in the plaintiff's complaint.

II

The plaintiff delivered this cotton to the Santo Tomas Gin Company of Mesquite, New Mexico for the purpose of separating the seed from the cotton and placing the same in marketable condition.

[fol. 8] III

The Santo Tomas Gin Company ginned the plaintiff's cotton and filed monthly returns with the Collector of Internal Revenue for New Mexico for the months of October, November and December as ginner of said cotton. The returns filed showed a total tax due in the amount of $13,064.52.

IV

Upon the returns hereinbefore listed assessments were made against the Santo Tomas Gin Company as follows: "Cotton ginning:

Oct.-Nov. 1934	P.T. 1934	Dec.	P. 8000 L. 7	$11,193.99
			12/19/34	$11,193.99 PD.
Dec. 1934	P.T. 1935	Jan.	P. 8001 L. 0	$ 1,870.53
			1/25/35	$ 1,870.53 PD.

The above tax was paid by checks drawn by Stahmann Farms payable to the Collector of Internal Revenue as follows:

Check No. 1571, for $9,131.44, dated November 27, 1934, drawn on the State National Bank of El Paso, Texas, cleared through Clearing House, El Paso Branch, Federal Reserve Bank, December 21, 1934;

Check No. 1584 for $1,550.23, dated November 28, 1934, drawn on the State National Bank of El Paso, Texas, cleared through Clearing House, El Paso Branch, Federal Reserve Bank, December 21, 1934;

Check No. 1728, for $512.32, dated December 13, 1934, drawn on the State National Bank of El Paso, Texas, cleared through Clearing House, El Paso Branch, Federal Reserve Bank, December 21, 1934, and

Check No. 135, dated January 19, 1935, for $1,870.53, drawn on the State National Bank of El Paso, Texas, cleared through Clearing House, El Paso Branch, Federal Reserve Bank, January 26, 1935.

V

The Santo Tomas Gin Company declined to deliver the ginned cotton to the plaintiff until the assessments made [fol. 9] were paid and the plaintiff paid the said tax by check drawn by the Stahmann Farms, payable to the Collector of Internal Revenue in the amounts hereinbefore listed.

VI

The Collector of Internal Revenue applied the payments made against the assessments outstanding on his books under the name of the Santo Tomas Gin Company, Mesquite, New Mexico.

VII

On March 6, 1935 the plaintiff filed a claim for refund of $13,064.52 with the Collector of Internal Revenue for the District of New Mexico, this claim being based upon the alleged unconstitutionality of the Bankhead Cotton Act.

VIII

On August 22, 1935, the Commissioner of Internal Revenue denied and rejected this claim.

IX

It is also stipulated and agreed that under the terms of the act sub-sec. (c), Sec. 703 Title 7 U. S. C. A. in question there was fixed as the maximum amount of the cotton crop harvested in the crop year 1934-1935 that might be marketed exempt from the payment of the tax by said act levied ten million five hundred pound bales, and that there was produced in the United States during the crop year 1934-1935 according to New York Cotton Exchange Basic Data nine million six hundred thirty-seven thousand five hundred pound bales, which figure is stipulated subject to change if found to be incorrect.

It is further stipulated that upon the above facts the following issues of law are raised:

1. Whether or not the Bankhead Cotton Act is or is not constitutional.

2. Whether the tax liability in question was that of the Santo Tomas Gin Company or of the plaintiff.

3. Whether, in view of the fact that less than ten million five hundred pound bales of cotton were produced in 1934-1935, that being the amount fixed by the terms of the act as [fol. 10] the maximum amount which might be produced for that year tax free, the Secretary of Agriculture had authority, without regard to the constitutionality of the act, to limit production and to impose the tax in question.

It is further stipulated that upon this Stipulation of Facts this matter be submitted to the Court upon briefs to be filed by the plaintiff and defendant.

W. C. Whatley, Attorney for Plaintiff. Wm. J. Barker, United States Attorney; Gilberto Espinosa, Assistant U. S. Attorney, Attorneys for Defendant.

The foregoing Stipulation is hereby approved this 23rd day of November, 1936.

Colin Neblett, United States District Judge.

IN UNITED STATES DISTRICT COURT

STIPULATION TO STRIKE PART OF STIPULATION OF NOVEMBER 23RD, 1936—Filed December 18, 1936

Whereas, in the above entitled and numbered cause, the plaintiff and defendant have heretofore entered into a stipulation whereby the facts in the above case might be submitted to the Court by stipulation, and whereas the said stipulation has been filed and approved by the Court;

Whereas, in said stipulation in Paragraph 9 (unnumbered Paragraph 2) it is stipulated that three issues of law are raised;

It Is Stipulated and Agreed by and between plaintiff and defendant that that part of said stipulation which stipulates the issues of law raised in this manner be stricken from the said stipulation and the matter submitted to the Court upon such issues of law as are raised by the pleadings and the facts.

W. C. Whatley, Attorney for Plaintiff. Wm. J. Barker, United States Attorney; Gilberto Espinosa, Assistant U. S. Attorney, Attorneys for Defendant.

[fol. 11] The foregoing Stipulation is hereby approved this 16th day of December, 1936.

Sam G. Bratton, Circuit Judge, Assigned to the District.

IN UNITED STATES DISTRICT COURT

DEFENDANT'S REQUEST FOR SPECIAL FINDINGS OF FACT AND CONCLUSIONS OF LAW AND MOTION FOR JUDGMENT—Filed December 30, 1936

Comes now the defendant by Wm. J. Barker, United States Attorney and Gilberto Espinosa, Assistant United States Attorney, at the close of all the evidence and before the submission of this case to the Court and before the decision of the Court and before the announcement by the Court of any decision and before the making of any findings of fact and conclusions of law and before the rendering or entering of any judgment herein, final or otherwise, and all of the evidence for the plaintiff and defendant having been introduced and filed in the form of a written agreed stipulation and statement of facts respectfully requests and moves the Court as follows:

1. Defendant requests the Court to find specially that the facts are as agreed upon by the parties in said stipulation of facts.

2. Defendant requests the Court to render conclusions of law that under the pleadings and agreed facts plaintiff is not entitled to recover from the defendant as prayed for in the complaint and that the facts are insufficient in law to justify or support any judgment in favor of the plaintiff.

3. Defendant moves the Court to order judgment in its favor upon the ground that the pleadings and the stipulated facts in this case with every inference that may properly be drawn therefrom are insufficient at law to warrant or support a judgment against the defendant and upon the ground that on the pleadings and the stipulated facts the defendant is entitled to judgment dismissing the plaintiff's complaint at the plaintiff's cost.

4. Defendant submits with and as a part of this motion proposed special findings of facts, conclusions of law, and order and judgment in the cause and requests the court to [fol. 12] approve and allow same substantially as submitted below:

SPECIAL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER AND JUDGMENT REQUESTED BY DEFENDANT

This cause came on regularly to be heard this — day of January, A. D. 1937, before the Honorable Colin Neblett,

United States District Judge sitting at Santa Fe, New Mexico. The parties were represented by their respective counsel of record and the cause was submitted to the Court upon the pleadings and a written agreed stipulation of facts which the parties had filed in the cause. At the close of the evidence, the defendant requested the Court to find specially that the facts are as set forth in the agreed stipulation of facts. The defendant then moved the Court to render conclusions that under the pleadings and the evidence the law is with the defendant and to award judgment to the defendant with costs against the plaintiff.

After consideration thereof and argument of counsel, the Court finds the facts, renders the conclusions, and orders and adjudges as follows:

REQUESTED SPECIAL FINDINGS OF FACT

The Court finds that the facts material to a determination of the issues in this cause are as agreed upon by the parties in the written stipulation of facts upon which the cause was submitted to the Court, and reference is made to said agreed stipulation of facts and said stipulation is hereby set out and made part of these special findings as follows:

(Stipulation)

All of those allegations of fact made in the plaintiff's complaint and admitted by the defendant's amended answer are herein incorporated by reference as a part of this stipulation.

I

During the crop year 1934 and 1935 the plaintiff produced a quantity of cotton in excess of its allotted amount under the Cotton Control Act, as set forth in the plaintiff's complaint.

[fol. 13]

II

The plaintiff delivered this cotton to the Santo Tomas Gin Company of Mesquite, New Mexico, for the purpose of separating the seed from the cotton and placing the same in marketable condition.

III

The Santa Tomas Gin Company ginned the plaintiff's cotton and filed monthly returns with the Collector of Internal

Revenue for New Mexico for the months of October, November and December as ginner of said cotton. The returns filed showed a total tax due in the amount of $13,064.32.

IV

Upon the returns hereinbefore listed assessments were made against the Santo Tomas Gin Company as follows: "Cotton ginning:

Oct-Nov. 1934	P.T. 1934 Dec.	P. 8000 L. 7	$11,193.99
		12/19/34	$11,193.99 PD.
Dec. 1934	P.T. 1935 Jan.	P. 8001 L.O.	$ 1,870.53
		1/25/35	$ 1,870.53 PD.

The above tax was paid by checks drawn by Stahmann Farms payable to the Collector of Internal Revenue as follows:

Check No. 1571, for $9,131.44, dated November 27, 1934, drawn on the State National Bank of El Paso, Texas, cleared through Clearing House, El Paso Branch, Federal Reserve Bank, December 21, 1934;

Check No. 1584 for $1,550.23, dated November 28, 1934, drawn on the State National Bank of El Paso, Texas, cleared through Clearing House, El Paso Branch, Federal Reserve Bank, December 21, 1934;

Check No. 1728, for $512.32, dated December 13, 1934, drawn on the State National Bank of El Paso, Texas, cleared through Clearing House, El Paso Branch, Federal Reserve Bank, December 21, 1934, and

Check No. 135, dated January 19, 1935, for $1,870.53, drawn on the State National Bank of El Paso, Texas, cleared through Clearing House, El Paso Branch, Federal Reserve Bank, January 26, 1935.

[fol. 14]

V

The Santo Thomas Gin Company declined to deliver the ginned cotton to the plaintiff until the assessments made were paid and the plaintiff paid the said tax by check drawn by the Stahmann Farms, payable to the Collector of Internal Revenue in the amounts hereinbefore listed.

VI

The Collector of Internal Revenue applied the payments made against the assessments outstanding on his books

under the name of the Santa Tomas Gin Company, Mesquite, New Mexico.

VII

On March 6, 1935 the plaintiff filed a claim for refund of $13,064.52 with the Collector of Internal Revenue for the District of New Mexico, this claim being based upon the alleged unconstitutionality of the Bankhead Cotton Act.

VIII

On August 22, 1935, the Commissioner of Internal Revenue denied and rejected this claim.

IX

It is also stipulated and agreed that under the terms of the Act Sub-sec. (c) 703, Title 7, U.S.C.A., in question there was fixed as the maximum amount of the cotton crop harvested in the crop year 1934-1935 that might be marketed exempt from the payment of the tax by said act levied ten million five hundred pound bales, and that there was produced in the United States during the crop year 1934-1935, according to New York Cotton Exchange Basic Data, nine million six hundred thirty-seven thousand five hundred pound bales, which figure is stipulated subject to change if found to be incorrect.

Requested Conclusions of Law

The Court concluded that under the pleadings and the facts as above found, the law is as follows:

1. That the plaintiff is not entitled to recover the whole or any part of the taxes sought to be recovered in this suit [fol. 15] for the reason that the plaintiff is and was not the taxpayer and the taxes which plaintiff seeks to recover herein were assessed against a person other than this plaintiff and the amount paid by this plaintiff's check was paid voluntarily to the defendant by the plaintiff for and on account of a tax liability of a person other than this plaintiff.

2. That the law under which the tax was collected was valid and constitutional.

3. That the taxes sought to be recovered were lawfully assessed and collected.

4. That the defendant is entitled to judgment in its favor against the plaintiff and order and judgment may be entered accordingly.

ORDER AND JUDGMENT

1. The motion of defendant for judgment in his favor is hereby granted with costs against the plaintiff.

2. It is ordered and adjudged by the Court that the plaintiff is not entitled to recover from the defendant in any sum, and that the defendant is entitled to judgment of dismissal, together with its lawful costs and expenses in the cause and this cause is hereby dismissed and judgment rendered in favor of the defendant at plaintiff's costs.

——— ———, United States District Judge.

In the event that the Court overrules the defendant's foregoing motion for judgment defendant respectfully excepts and prays that it be allowed an exception to such action and ruling of the Court and the defendant further excepts and prays that it be allowed an exception or exceptions to the action and ruling of the Court in making and entering any findings of fact or conclusions *or* law contrary to those requested by the defendant.

Respectfully submitted, Wm. J. Barker, United States Attorney. Gilberto Espinosa, Assistant U. S. Attorney.

[fol. 16] The foregoing requested findings and conclusions of law requested by defendant are refused and denied.

Colin Neblett, United States District Judge.

IN UNITED STATES DISTRICT COURT

FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed January 30, 1937

This cause having been heretofore submitted to the court upon the pleadings and upon a stipulation of facts, and the plaintiff and the defendant having submitted their briefs in writing, and the court having read the pleadings and the briefs of the respective parties and having considered the same, Finds the following facts:

I

That during the crop year of 1934-1935, plaintiff was engaged in Dona Ana County, New Mexico, in the growing of cotton, and was and had been for many years prior thereto, cultivating in excess of two thousand (2000) acres of land; and that during said crop year, plaintiff produced a quantity of cotton in excess of that which, under the provisions of the so-called Cotton Control Act, being Public #169 of the 73rd Congress, approved April 21, 1934, 48 Stat. A. L. 598- Chapter 157, U. S. C. Title 7, Sections 725, et seq., it was entitled to obtain exemption certificates to cover, and it was compelled under the provisions of said act to pay, and it did pay, to the defendant, but under protest, as tax on said excess cotton, the sum of Thirteen Thousand Sixty-four and 52/100 dollars ($13,064.52), upon the dates and in the amounts as follows:

On December 21, 1934, the sum of $11,193.99;

On January 26, 1935, the sum of $1870.53.

II

That subsequent to the payment of said sum of money, in order to obtain the release of said excess cotton, plaintiff filed due claim with said defendant for the refund of said amount so paid, which claim was in due course denied and rejected by the Commissioner of Revenue of the United States, in pursuance of which, this suit was filed.

[fol. 17]

III

That under the terms of the said act, the United States Government had, and there was fixed by the said Act, a lien upon plaintiff's said excess cotton equal to 5.67 per pound, and plaintiff was forbidden to transport the said cotton or to sell or dispose of the same until the said tax was paid.

IV

That said cotton was all ginned by the Santo Tomas Gin Co., who filed monthly returns with said defendant for the months of October, November, and December, 1934, as the ginner of said cotton, which said returns showed a total tax due of Thirteen Thousand Sixty-four and 52/100 dollars ($13,064.52).

And from the Facts thus found, the court Concludes:

As a matter of law that the so-called tax attempted to be imposed and which was imposed by said Cotton Control Act,

was a tax and charge upon the producer and not upon the ginner; and that by the enactment of said statute, Congress intended to control and regulate the production of cotton in the United States, and the so-called tax was a mere incident of such regulation.

The court further concludes that the said Cotton Control Act is unconstitutional and especially offends against the provisions of the tenth amendment to the Constitution of the United States; and that the tax in question was illegally assessed and unlawfully collected and should be refunded to the plaintiff, together with interest thereon at the rate of six per cent (6%) per annum from the respective dates of the payment thereof as hereinbefore found.

Accordingly, a Judgment may be entered in favor of the plaintiff in pursuance of the foregoing Findings and Conclusions, to which the defendant, by his attorneys of record, duly accepts.

Done at Las Cruces, New Mexico, this 30th day of January, 1937.

Colin Neblett, United States District Judge.

[fol. 18] In United States District Court

Judgment—Filed January 30, 1937

Upon the findings of fact and conclusions of law, found and stated by the Court after consideration of the pleadings and stipulation of facts and the written briefs of the parties, the same having been filed herein

It Is Considered, Ordered and Adjudged That the plaintiff, Stahmann Farms, a copartnership composed of D. F. Stahmann, Anna M. Stahmann, and Joyce H. Stahmann, do have and recover of and from the defendant, S. P. Vidal, as Collector of Internal Revenue for the District of New Mexico, the sum of Thirteen Thousand Sixty-four and 52/100 (13,064.52) Dollars, with interest on Eleven Thousand One Hundred Ninety-three and 99/100 (11,193.99) Dollars of said amount from Dec. 21, 1934, and on Eighteen Hundred Seventy and 53/100 (1,870.53) Dollars of said amount from Jan. 26, 1935, at the rate of six per centum per annum, and all costs.

To which the defendant by his attorneys of record duly excepts.

Done at Las Cruces, New Mexico, this 30th day of January, 1937.

Colin Neblett, United States District Judge.

IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL—Filed April 30, 1937

To the above entitled Court and to the Honorable Colin Neblett, Judge thereof:

Your petitioner, the defendant in the above entitled case, feeling aggrieved by the judgment as entered herein in favor of said plaintiff on January 30, 1937, prays that this appeal be allowed, and that citation be issued as provided by law and that a transcript of the record of the proceedings, and documents upon which said decree was based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Tenth Circuit, under the rules of such Court in such cases made and provided, and in connection with this petition, petitioner presents Assignment of Errors, dated April 29, 1937.

Wm. J. Barker, United States Attorney. Gilberto Espinosa, Assistant U. S. Attorney.

[fol. 19] IN UNITED STATES DISTRICT COURT

ORDER ALLOWING APPEAL—Filed April 30, 1937

In the above entitled action, the defendant having filed its petition for an order allowing it to appeal from the judgment entered in the above entitled cause on January 30, 1937;

It Is Ordered that said appeal from said judgment to the United States Circuit Court of Appeals for the Tenth Circuit be and the same is hereby allowed to the defendant, and that a certified copy of the record, bill of exceptions, exhibits, stipulations and pleadings and all proceedings herein be transmitted to the said United States Circuit Court of Appeals.

Dated at Santa Fe, New Mexico, this 30th day of April, A. D. 1937.

Colin Neblett, United States District Judge.

IN UNITED STATES DISTRICT COURT

ASSIGNMENT OF ERRORS—Filed April 30, 1937

The defendant makes and files the following Assignment of Errors upon which it will rely for the prosecution of

its appeal from the Judgment of this Court entered on the 30th day of January, 1937, as follows, to wit:

1

That the Court erred in holding that the Act of April 21, 1934, Chapter 157, 48 Stat. 598, as amended by the Act of June 20, 1934, Chapter 687, 48 Stat. 1184, commonly known as the Bankhead Cotton Control Act was unconstitutional and void.

2

That the Court erred in holding that the Act of April 21, 1934, as amended, violated the tenth amendment to the Federal Constitution.

3

That the Court erred in holding that the Act of April 21, 1934, as amended, was an act regulating and controlling the production of cotton.

4

That the Court erred in holding that the tax imposed under the Act of April 21, 1934, as amended, was a mere incident of such regulation and control of the production of cotton.

[fol. 20]

5

That the Court erred in failing and refusing to hold that the Act of April 21, 1934, as amended, was a proper exercise of the taxing power of Congress as authorized under the Federal Constitution

6

That the Court erred in failing and refusing to hold that the Act of April 21, 1934, was a proper exercise of the power of Congress under the Federal Constitution to regulate interstate and foreign commerce.

7

That the Court erred in holding that the tax imposed under the Act of April 21, 1934, as amended, was a tax upon the producer of cotton and not a tax upon the ginner of cotton.

8

That the Court erred in holding that the sum sought to be recovered by the plaintiff in the above entitled action was unlawfully collected from him by the defendant.

9

That the Court erred in holding that the plaintiff is entitled to judgment against the defendant and in entering judgment for the plaintiff in the sum of $13,064.52, or for any amount and in holding that the plaintiff was entitled to have judgment against the defendant for interest on $11,193.99, from December 21, 1934 and on $1,807.53 from January 26, 1935, at the rate of six per centum per annum or in any amount or any part of such sum for the reason that the facts stipulated by the parties do not support such judgment.

10

That the Court erred in failing and refusing to find specially that the facts were as agreed upon by the parties in their stipulation of facts for the reason that the evidence of such facts is undisputed and there is no evidence in the record to support findings to the contrary.

11

That the Court erred in failing and refusing to find as a fact as requested by the defendant in paragraph four of [fol. 21] his request for special findings of fact that upon the returns filed by the Santo Tomas Gin Company of Mesquite, New Mexico, for the months of October, November and December, 1934, assessments were made against the Santo Tomas Gin Company as follows:

"Cotton ginning:

Oct.-Nov. 1934	P.T. 1934 Dec.	P. 8000 L. 7	$11,193.99	
		12/19/34	$11,193.99	PD.
Dec. 1934	P.T. 1935 Jan.	P. 8001 L. 0	$ 1,870.53	
		1/25/35	$ 1,870.53	PD.

The above tax was paid by checks drawn by Stahmann Farms payable to the Collector of Internal Revenue as follows:

Check No. 1571, for $9,131.44 dated November 27, 1934, drawn on the State National Bank of El Paso, Texas,

cleared through Clearing House, El Paso Branch, Federal Reserve Bank, December 21, 1934;

Check No. 1584, for $1,550.23, dated November 28, 1934, drawn on the State National Bank of El Paso, Texas, cleared through Clearing House, El Paso Branch, Federal Reserve Bank, December 21, 1934;

Check No. 1728, for $512.32, dated December 13, 1934, drawn on the State National Bank of El Paso, Texas, cleared through Clearing House, El Paso Branch, Federal Reserve Bank, December 21, 1934, and

Check No. 135, dated January 19, 1935, for $1,870.53, drawn on the State National Bank of El Paso, Texas, cleared through Clearing House, El Paso Branch, Federal Reserve Bank, January 26, 1935,"

for the reason that the evidence of such facts is undisputed and there is no evidence in the record to support a finding to the contrary.

12

That the Court erred in failing and refusing to find as a fact as requested by the defendant in paragraph five of his request for special findings of fact that the Santo Tomas Gin Company declined to deliver the ginned cotton to the plaintiff until the assessments made against it were paid and that the plaintiff paid the tax by check drawn by the [fol. 22] Stahmann Farms payable to the Collector of Internal Revenue in the amounts listed above for the reason that the evidence of such fact is undisputed and there is no evidence in the record to support a finding to the contrary.

13

That the Court erred in failing and refusing to find as a fact, as requested by the defendant in paragraph six of his request for special findings of fact that the Collector of Internal Revenue applied the above payments made by the Stahmann Farms against the assessments outstanding on his books under the name of the Santo Tomas Gin Company, Mesquite, New Mexico, for the reason that the evidence for such fact is undisputed and there is no evidence in the record to support a finding to the contrary.

14

That the Court erred in failing and refusing to find as a fact as requested by the defendant in paragraph nine of his

request for special findings of fact that under the terms of Section Two C of the Act of April 21, 1934, as amended, there was fixed as the maximum amount of the cotton crop harvested in the crop year 1934-1935 that might be marketed exempt from the payment of the tax by said act levied 10,000,000,500 pound bales and that there was produced in the United States in the crop year 1934-1935, according to New York Cotton Exchange, Basic data, 9,637,000 bales of cotton of 500 pounds each for the reason that the evidence of such fact is undisputed and there is no evidence in the record to support a finding to the contrary.

15

That the Court erred in finding as a fact that the amount paid by the plaintiff to the defendant under the terms of the Act of April 21, 1934, as amended, were paid under protest for the reason that there is no evidence in the record to support such finding.

16

That the Court erred in failing and refusing to find that upon the facts and the law, judgment must be entered in favor of the defe dant and against the plaintiff herein.

[fol. 23]

17

That the Court erred in overruling the defendant's motion for judgment for the reason that the undisputed evidence in the record fully supports the defendant's motion for judgment and the undisputed evidence in the record does not support a judgment against the defendant and in favor of the plaintiff.

18

That the Court erred in refusing to grant the defendant's motion for judgment and in refusing to enter judgment for the defendant and against the plaintiff herein for the reason that the undisputed evidence supports a judgment in favor of the defendant and does not support a judgment in favor of the plaintiff and against the defendant.

19

That the Court erred in failing and refusing to find that the pleadings and the evidence in this case were insufficient

in law to enter judgment in favor of the plaintiff and against the defendant for the reason that the pleadings and the undisputed evidence in the record require a judgment in favor of the defendant and do not support a judgment in favor of the plaintiff.

Wherefore defendant prays that said judgment be reversed and for such other and proper relief as to the Court may appear fit and proper.

Dated this 30th day of April, 1937.

Wm. J. Barker, United States Attorney; Gilberto Espinosa, Assistant U. S. Attorney, Attorneys for Defendant.

IN UNITED STATES DISTRICT COURT

PRAECIPE FOR TRANSCRIPT OF RECORD ON APPEAL—Filed April 30, 1937

To William D. Bryars, Clerk of the United States District Court for the District of New Mexico:

You are hereby requested to make a Transcript of Record to be filed in the United States Circuit Court of Appeals for the Tenth Circuit, pursuant to an appeal allowed in the [fol. 24] above entitled cause and to include in said Transcript of Record the following papers:

1. Complaint of Plaintiff.
2. Stipulation extending time to answer to June 29, 1936.
3. Stipulation extending time to answer to August 10, 1936.
4. Defendant's answer.
5. Stipulation waiving Jury Trial.
6. Defendant's Amended Answer.
7. Stipulation as to facts, etc.
8. Stipulation filed December 18, 1936.
9. Defendant's request for Special Findings of Fact and Conclusions of Law and Motion for Judgment, with the Court's endorsement of Refusal.
10. Findings of Fact and Conclusions of Law.
11. Judgment of Court.
12. Petition for Appeal.
13. Order allowing Appeal.

14. Citation.
15. Assignment of Errors.
16. This Praecipe.
17. Clerk's Certificate.

Dated April 29, 1937.

Wm. J. Barker, United States Attorney; Gilberto Espinosa, Assistant U. S. Attorney, Attorneys for Defendant.

REFERENCE AS TO CITATION

[Citation in proper form, directed to appellees, was issued on April 30, 1937, and on May 11, 1937, service of said citation was acknowledged by counsel for appellees.]

[fol. 25] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 26] IN UNITED STATES DISTRICT COURT

Bill of Exceptions

Be it remembered that on November 23, 1936, the above entitled cause came on for trial at Las Cruces, New Mexico, upon the issues joined therein, before Hon. Colin Neblett, sitting as a judge of said court without a jury, a jury having been waived by the parties. W. C. Whatley appeared for the plaintiff. William J. Barker, United States Attorney, and A. Gilberto Espinosa, Assistant United States Attorney, appeared for the defendant. The following proceedings were had:

STIPULATION TO STRIKE, ETC.

Thereafter, a stipulation signed by counsel for both parties, and which read as follows, was filed with the Court on December 16, 1936:

[The stipulation in identical form appearing at page 10 of this record is not reprinted here.]

STIPULATION OF FACTS, ETC.

At the hearing mentioned above a stipulation of facts, signed by counsel for both parties, and which read as follows, was offered and received in evidence:

[The stipulation in identical form appearing at page 7 of this record is not reprinted here.]

REQUEST FOR FINDINGS OF FACT, ETC.

Whereupon the plaintiff moved for judgment in its favor and the defendant moved the Court to make the following findings of fact and conclusions of law, and to enter judgment in his favor:

[Defendant's request for special findings of fact and conclusions of law and motion for judgment appearing in identical form at page 11 of this record is not reprinted here.]

Thereupon the Court took the case under advisement.

[fol. 27] FINDINGS OF FACT, CONCLUSIONS OF LAW, ETC.

Thereafter, on January 30, 1937, the Court made findings of fact substantially as requested by the defendant, except that the Court failed to find the facts requested by the defendant in paragraphs IV, V, VI, and IX of his request for special findings of fact, to which failure to make the findings requested the defendant duly excepted.

And on January 30, 1937, the Court made conclusions of law in favor of the plaintiff and against the defendant, and refused to make conclusions of law as requested by the defendant, to which failure to make the conclusions of law requested the defendant duly excepted.

And on January 30, 1937, the Court overruled the defendant's motion for judgment, to which ruling the defendant duly excepted, and gave and entered judgment in favor of the plaintiff, to which judgments and all orders and rulings contained therein the defendant duly excepted.

For as much as the matters and things set forth above do not fully appear of record, the defendant tenders and presents the foregoing as his bill of exceptions in the above

cause and prays that the same be settled, allowed, and signed and sealed, and made a part of the record in the cause, by this Court pursuant to the law in such cases.

Wm. J. Barker United States Attorney; Gilberto Espinosa, Assistant U. S. Attorney, Attorneys for the Defendant.

Approved: W. C. Whatley, Attorney for the Plaintiff.

IN UNITED STATES DISTRICT COURT

ORDER APPROVING AND SETTLING BILL OF EXCEPTIONS

I, the undersigned, United States District Judge who presided at the trial of the above entitled cause, do hereby certify that the foregoing Bill of Exceptions duly and timely proposed by counsel for the defendant and approved by counsel for the plaintiff, contains all of the testimony, stipulations, rulings, orders and other proceedings had upon the [fol. 28] trial of the cause, and that all of the evidence set out in the foregoing Bill of Exceptions is in the opinion of the said District Judge necessary and proper for the presentation of the questions presented by said Bill of Exceptions, and I hereby settle and allow the foregoing Bill of Exceptions as a full, true, and correct Bill of Exceptions in the above cause and order the same filed as a part of the record herein.

I further certify that the foregoing Bill of Exceptions conforms to all local rules relating to the presenting, settling, and filing of a Bill of Exceptions, and that the foregoing Bill of Exceptions is presented, settled, and allowed and ordered filed within the term of this Court in which the judgment and decision in said cause was rendered.

Dated this 26th day of May 1937.

Colin Neblett, District Judge.

IN UNITED STATES DISTRICT COURT

SUPPLEMENTAL PRAECIPE—Filed June 3, 1937

To William D. Bryars, Clerk of the United States District Court for the District of New Mexico:

You are hereby requested to make a Supplemental Transcript of the Record to be filed in the United States Circuit

Court of Appeals for the Tenth Circuit, pursuant to appeal allowed in the above entitled cause and to include in said Supplemental Transcript of Record the following:

1. Bill of Exceptions, as settled by Court.
2. Clerk's Certificate.
3. This Præcipe.

Dated May 27th, 1937.

Wm. J. Barker, United States Attorney; Gilberto Espinosa, Assistant U. S. Attorney, Attorneys for Defendant.

I hereby acknowledge receipt of a copy of the above Præcipe this 31st day of May, 1937.

W. C. Whatley, Attorney for Plaintiff.

[fols. 29-30] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 31] In United States Circuit Court of Appeals

Order of Submission—September 22, 1937

This cause came on to be heard, Fred E. Youngman, Esquire, appearing for appellant, no one appearing for appellees.

Thereupon this cause was argued by counsel for appellant and submitted to the court.

In United States Circuit Court of Appeals, Tenth Circuit

No. 1568—September Term, 1937

Before Bratton and Williams, Circuit Judges, and Symes, District Judge

Opinion—December 27, 1937

Symes, District Judge, delivered the opinion of the court:

Plaintiff below (Stahmann Farms), a co-partnership, recovered judgment for $13,064.52 against the appellant (de-

fendant below), in the District Court of the United States for the District of New Mexico, alleged to have been paid as taxes under the so-called Bankhead Cotton Act (Act of April 21, 1934), C. 157, 48 Stat. 598. The defendant appeals. Two questions are briefed and argued. 1. Is the plaintiff the proper party to maintain this action. 2. Is the so-called Bankhead Cotton Act (supra), constitutional.

[fol. 32] A jury trial was waived and the case heard by the court upon the facts admitted by the pleadings and a written stipulation filed by the parties.

It appears that during the crop year 1934-5 appellee, Stahmann Farms was engaged in the growing of cotton in Dona Ana County, New Mexico, and had been for many years prior thereto, cultivating over 2,000 acres. During the above year it produced a quantity of cotton in excess of the allotment it was entitled to exemption certificates to cover. It delivered this cotton to the Santo Tomas Gin Company to be ginned. The latter ginned it and filed the fequired monthly returns with the Collector, which showed a tax due of $13,064.52, of which amount $11,193.99 was assessed against the gin company in December, 1934, and the balance $1870.53, in the January following. The gin company declined to deliver the ginned cotton to the appellee until the assessments against it were paid. Whereupon appellee paid these sums to the Collector with its four checks drawn to his order. He applied the same against the assessments outstanding on his books against the Santo Tomas Gin Company.

The lower court held the Act unconstitutional; that the tax was attempted to be imposed against the producer and not the ginner; was illegally assessed and collected and should be returned to the Stahmann Farms.

1. The Bankhead Cotton Act (since repealed), imposes a tax upon cotton ginned in excess of certain exemptions allowed by the Act.

Sec. 4 (a). "There is hereby levied and assessed on the ginning of cotton hereafter harvested during a crop year with respect to which this act is in effect, a tax at the rate per pound of the lint cotton produced from ginning, of 50 per centum of the average central market price per pound of lint cotton," etc.

Sub-section (c) of § 4 requires the ginner to make monthly returns of all cotton ginned to the Collector and makes him liable for the payment of the tax. Furthermore the regulations of the Commissioner of Internal Revenue say (Art. 13):

"Liability for the tax attaches to the ginner immediately upon ginning of the cotton."

[fol. 33] The Collector made no attempt to collect the assessment from the appellee and there is no provision in the statute imposing liability therefor upon the producer, except under circumstances not here pertinent. Unginned cotton is exempt from the tax and it makes no difference as to the ginner's liability, whether he processes his own or someone else's cotton. Stahmann Farms was a stranger to the Collector throughout and the fact that the ginner required it to pay the tax before returning to it its cotton does not change the situation. Clearly the Act taxes the processing of cotton and makes the ginner primarily liable.

The law applicable to this situation is thus stated in 61 C. J. p. 949, etc., § 1226:

"Payment of taxes by a stranger, a mere volunteer • • • cannot be made the foundation of any right or claim on the part of such third person."

§ 1227, p. 950:

"But a person cannot make the true owner of property his debtor by a mere voluntary payment of taxes thereon."

P. 986, § 1264:

"A payment is voluntary, in the sense that no action lies to recover back the amount, not only where it is made willingly and without objection, but in all cases where there is no compulsion or duress, or any immediate and urgent necessity therefor, as a means of preventing an immediate seizure of the taxpayer's person or property,' etc.

"So, ordinarily, payment is voluntary where there has been no demand for the taxes, no steps taken to enforce them, and no pressure exerted to compel their payment."

And see § 1283, p. 1005, to the effect that the burden is upon the taxpayer to prove the payment was not voluntary. In

the following cases recovery of taxes paid by volunteers under circumstances more or less similar to those of the instant case were denied. Central Aguirre Sugar Co. v. U. S., 2 Fed. Sup. 538; Wourdack v. Becker, 55 Fed. (2d) 840 (C. C. A. 8th), certiorari denied 286 U. S. 548; Clift & Goodrich v. U. S., 56 Fed. (2d) 751 (C. C. A. 2nd), cer-
[fol. 34] tiorari denied 287 U. S. 617; Ohio Locomotive Crane Co. v. Denman, 73 Fed. (2d) 408 (C. C. A. 6th), certiorari denied 294 U. S. 712; Hammerstrom County Treasurer v. Toy Nat. Bank of Sioux City, 81 Fed. (2d) 628 (C. C. A. 8th).

Compare the facts in Railroad Company v. Commissioners, 98 U. S. 541, where the court said this language from Wabaunsee County v. Walker, 8 Kansas 431, is a correct statement of the rule of the common law.

"Where a party pays an illegal demand with a full knowledge of all the facts which render such demand illegal, without an immediate and urgent necessity therefor or unless to release his person or property from detention, or to prevent an immediate seizure of his person or property, such payment must be deemed voluntary and cannot be recovered back."

Little v. Bowers, 134 U. S. 547; U. S. v. New York and Cuba Mail Steamship Co., 200 U. S. 488; Blanks v. Hazen, 85 Fed. (2d) 384 (C. C. A. Dist. of Columbia); Ward v. Love County, 253 U. S. 17; U. S. v. Edmonston, 181 U. S. 500; Chesebrough v. U. S., 192 U. S. 253.

2. Suitors may not require the decision on a constitutional question in the absence of a showing that otherwise irreparable injury will result. United Gas Co. v. R. R. Comm'n., 278 U. S. 300, at p. 310. By parity of reasoning this rule applies to a plaintiff having no cause of action. And following a long line of decisions we refrain from passing upon the constitutionality of an act of Congress not squarely presented and necessary to a decision of the case.

The last statement of the Supreme Court of this principle is in Tennessee Pub. Co. v. Amer. Bank, 299 U. S. 18, at p. 22:

"It is a familiar rule that the court will not anticipate the decision of a constitutional question upon a record which does not appropriately present it." Citing—

Liverpool, N. Y. & P. S. S. Co. v. Commissioners, 113 U. S. 33, 39; Cincinnati v. Vester, 281 U. S. 439, 448, 449; Arizona v. California, 283 U. S. 463, 464. The U. S. Circuit Court of Appeals for the Fifth Circuit has decided the constitutional question in U. S. v. Lee Moor, Dec. 9, 1937.

We conclude the plaintiff was not the proper party to maintain this action.

[fol. 35-36] The judgment is reversed and the cause remanded with directions to dismiss the complaint.

In United States Circuit Court of Appeals

Judgment—December 27, 1937

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of New Mexico and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court that the judgment of the said district court in this cause be and the same is hereby reversed; that this cause be and the same is hereby remanded to the said district court with directions to dismiss the complaint; and that S. P. Vidal, Collector of Internal Revenue for the District of New Mexico, appellant, have and recover of and from Stahmann Farms, a copartnership composed of D. F. Stahmann, Anna M. Stahmann and Joyce F. Stahmann, appellees, his costs herein and have execution therefor.

[fols. 37-46] Petition for rehearing, covering 9 pages, filed January 25, 1938, omitted from this print. It was denied, and nothing more by order of February 5, 1938.

[fol. 47] In United States Circuit Court of Appeals

Order Denying Petition for Rehearing—February 5, 1938

This cause came on to be heard on the petition of appellees for a rehearing herein and was submitted to the court.

On consideration whereof, it is now here ordered by the court that the said petition be and the same is hereby denied.

IN UNITED STATES CIRCUIT COURT OF APPEALS

MOTION FOR STAY OF MANDATE—Filed February 16, 1938

To said Honorable Court:

Come now D. F. Stahmann, Anna M. Stahmann, and Joyce F. Stahmann, doing business as partners under the name Stahmann Farms, appellees in the above styled and numbered cause, and respectfully show to the court that they contemplate applying to the Supreme Court of the United States for a writ of certiorari in this case. They will promptly prepare and file said application. No damage will be sustained by appellant if the mandate is withheld, and not issued to the trial court.

Wherefore, appellees move the court to withhold the issuance of its mandate for a period of thirty days, as provided in Rule 29 of this court.

W. C. Whatley, of Las Cruces, N. M.; Thornton Hardie, Box 419, El Paso, Texas, Attorneys for Appellees.

STATE OF TEXAS,
County of El Paso:

I, Thornton Hardie, being duly sworn, state that the matters set forth in the foregoing motion are true, and that I am one of the attorneys for appellees and I make this affidavit in their behalf and that this application is not made for delay, but is made in good faith, and that a copy of this motion has on this day been placed in the United States mail, addressed to Mr. F. E. Youngman, one of the attorneys for the appellant in the above cause.

Thornton Hardie

[fols. 48-49] [File endorsement omitted.]

IN UNITED STATES CIRCUIT COURT OF APPEALS

ORDER GRANTING MOTION FOR STAY OF MANDATE—February 16, 1938

This cause came on to be heard on the motion of appellees for a stay of the mandate herein and was submitted to the court.

On consideration whereof, it is now here ordered by the court that said motion be and the same is hereby granted and that no mandate of this court issue herein for a period of thirty days from this day, and that, if within said period of thirty days there is filed with the clerk of this court a certificate of the clerk of the Supreme Court of the United States that a petition for writ of certiorari, record and brief have been filed, with proof of service thereof under Section 3 of Rule 38 of the Supreme Court, the stay hereby granted shall continue until the final disposition of the case by the Supreme Court.

Clerk's certificate to foregoing transcript omitted in printing.

[fol. 50] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 25, 1938

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Tenth Circuit is granted, limited to the question whether the petitioners were the proper parties to maintain the suit.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 42,358. U. S. Circuit Court of Appeals, Tenth Circuit. Term No. 877. D. F. Stahmann, Anna M. Stahmann and Joyce F. Stahmann, doing business as Stahmann Farms Company, petitioners, vs. S. P. Vidal, Collector of Internal Revenue for the District of New Mexico. Petition for a writ of certiorari and exhibit thereto. Filed March 16, 1938. Term No. 877, O. T., 1937.